

## RIGHT TO APPEAL - CIVIL

A party may appeal a final order or a final judgment entered in any civil case (including forcible and special detainer actions; injunctions against harassment; orders of protection; and workplace harassment). This notice explains your rights and responsibilities to file an appeal from such an order or judgment. The appeal procedure is set forth in Superior Court Rules of Appellate Procedure, effective June 1, 2003, and in the Arizona Revised Statutes.

There are two separate stages to the appeal process. The first stage begins in the Justice Court; the second stage takes place in the Superior Court. You must complete ALL steps at both stages, or you risk having your appeal dismissed. This notice does not set forth all the rules that govern the appeal process. You may review the complete rules at the library as contained in the Superior Court Rules of Appellate Procedure and in the Arizona Revised Statutes. It is recommended that you keep a copy of all your documents during the appeal process.

**SPECIAL NOTE RE FORCIBLE SPECIAL DETAINER appeals:** There are some processes that differ, depending on the type of case being appealed. Please note the different timelines applicable to forcible and special detainer appeals and the two kinds of supersedeas bonds that may be posted. You may review the specific statutes applicable to forcible or special detainer appeals in the Arizona Revised Statutes, Title 12, Article 4 and in the Arizona Residential Landlord Tenant Act available from the Secretary of State or online at [www.az.sos.gov](http://www.az.sos.gov).

**SPECIAL NOTE RE APPEALS of ORDERS OF PROTECTION and INJUNCTIONS AGAINST HARASSMENT and WORKPLACE HARASSMENT.**

This court does not assess fees with the appeal process. However, Superior Court will charge a filing fee for appeal of workplace harassment. Also, you will be responsible for making arrangements for payment of preparation of the transcript of the record of proceedings.

Additionally, unless otherwise ordered by the court, the protective or injunctive order will stay in effect pending the appeal.

### STAGE ONE – THE TRIAL COURT

The trial court is the justice court.

**THE NOTICE OF APPEAL** To appeal you must file a NOTICE OF APPEAL with the trial court within fourteen calendar days from the date of the judgment.

**SPECIAL NOTE RE FORCIBLE DETAINER APPEALS:**

To appeal this type of case, you must file a NOTICE OF APPEAL with the trial court within **FIVE** calendar days from the date of the judgment.

**SPECIAL NOTE RE IMMEDIATE FORCIBLE DETAINER APPEALS:**

A judgment resulting from an irreparable breach will be carried out immediately. Any appeal should be filed before enforcement of a Writ of Restitution (within 12 to 24 hours after the judgment is entered).

If you do not file a NOTICE OF APPEAL within the time allowed by law, you lose the right to appeal. The time to file cannot be extended. It is required that you designate the specific judgment or order you are appealing in the NOTICE OF APPEAL.

If you file an appeal you are the APPELLANT. The opposing party is the APPELLEE. The Justice Court is the trial court.

**APPEAL FEES** On or before the deadline to appeal, you must pay a \$51.00 appeal fee. The fee includes the cost of a copy of the taped proceedings; a certification of the appeal record; and the transmittal of the record on appeal to the Superior Court. The court will accept CASH, CHECK, CREDIT CARD or MONEY ORDER.

**THE RECORD** The justice court record is made by audiotape, CID or video. The court will contact you to pick up a copy of the audiotape, CID or video within 10 days after you have paid the required fees.

If the taped proceedings are more than 90 minutes in length, it will be necessary for you to pay a court reporter to prepare a transcript (a typed record) of the proceedings. You can find a listing for COURT REPORTERS in the yellow pages of the telephone book.

Within the deadline to appeal (5 days for forcible detainer and 14 days for all other civil), you must make arrangements with the court reporter or transcriber to pay any record or transcript preparation fees. The transcript must be filed with the trial court before, or at the same time, you file your memorandum (see FILING THE APPEAL MEMORANDUM).

**DESIGNATE THE RECORD** Within the time to appeal you must designate the record with the trial court by filing a formal list of the items you want included in the record on appeal.

**THE COST BOND** On or before the deadline to appeal you must pay a COST BOND. The bond is set at \$250.00. The purpose of this bond is to cover court costs incurred by the APPELLEE, in defending the appeal. If you cannot afford to pay the cost bond, you must complete an AFFIDAVIT OF INABILITY TO POST BOND. The opposing party has a right to object to such an affidavit and the court may hold a hearing to determine the validity of the affidavit.

**SUPERSEDEAS BOND(S)** The purpose of a supersedeas bond is to stay enforcement of the judgment. The two supersedeas bonds explained here have two separate purposes. One will stay collection actions on the amount of the judgment awarded, i.e. garnishment proceedings. The other will stay any eviction proceeding resulting from a forcible detainer judgment.

You may still exercise your right to appeal without posting a supersedeas bond. But you must post one or both supersedeas bonds to stay enforcement of the judgment.

**TO STAY COLLECTION PROCEEDINGS** The amount of the bond is the total amount of the judgment ordered by the court, including court costs, attorney fees, damages, etc. The purpose of this bond is to stay collection proceedings on the money judgment awarded, i.e. a Writ of Execution, where personal property may be taken and sold to satisfy the judgment, or garnishment proceedings. The stay becomes effective when the bond is posted.

**SPECIAL NOTE RE FORCIBLE DETAINER APPEALS:**

**TO STAY EVICTION** Another supersedeas bond may be posted to stay eviction proceedings enforced by a WRIT OF RESTITUTION. The amount of the bond is the amount of rent due from the date of the judgment to the next periodic rental due date, plus court costs and attorney fees ordered in the judgment.

To stay the eviction proceedings a supersedeas bond must be posted before the Writ of Restitution is enforced. The stay becomes effective when the bond is posted, but cannot be retroactive if the Writ has already been executed.

A judgment resulting from an irreparable breach will be carried out immediately. A supersedeas bond to stay the eviction must be filed before enforcement of the Writ of Restitution (within 12 to 24 hours after the judgment is entered) to have a stay effect on the eviction.

**PAYMENT OF RENT** In addition, all rent payments must be paid to the trial court on or before the rental due date, pending the appeal process.

If the rent is not timely received, the court may issue a WRIT OF RESTITUTION for execution of the judgment for possession and the eviction proceedings.

All bonds are paid to the trial court. The court will accept CASH, ATTORNEY TRUST CHECK, or CASHIER'S CHECK for payment of bonds.

**THE WRITTEN APPEAL MEMORANDUM** You will need the record for the next step – the APPELLANT'S MEMORANDUM. The appellant's memorandum is your written explanation of why the trial court ruling was legally wrong. Normally your memorandum should refer to specific portions of the record of the trial or

hearing to point out where there was error by the court. That is why a written record (the transcript) must be prepared.

The memorandum should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length. In addition, you may also attach exhibits from your hearing to the memorandum.

**FILING THE APPEAL MEMORANDUM** (within 60 days) The transcript and the APPELLANT'S MEMORANDUM must be filed with the court within 60 calendar days of the deadline to file the NOTICE OF APPEAL.

Type or print the caption of the case and your case number at the top of your memorandum. Type or print the title, APPELLANT'S MEMORANDUM, below the caption so that court can identify it when it is filed. If you are not represented by an attorney you must file the original with the trial court, and one additional copy of the memorandum for every party in the case. The other side will then have 30 days to file an Appellee's Memorandum in response.

**WAIT FOR FURTHER INSTRUCTIONS** Once the memorandum has been filed, you should wait for further instructions from the Superior Court as outlined in Stage Two. Remember that the trial court must have your current mailing address at all times to keep you informed. Even if you hire an attorney your address is still required for legal notifications.

**CROSS-APPEALS** The rules regarding cross-appeals are set forth in full detail in the Superior Court Rules of Appellate Procedure previously mentioned herein.

## **STAGE TWO - THE SUPERIOR COURT**

**PAYING THE SUPERIOR COURT FILING FEE** If you have completed all of the first stage, your case moves to Superior Court. About 60 days after you file your memorandum, you will receive a notice from the Superior Court. This notice will instruct you to pay the Superior Court filing fee. You must pay this filing fee or your appeal may be dismissed and your case sent back to the trial court.

If you cannot afford to pay the filing fee, you must contact the Superior Court clerk for information about a possible waiver or extension to make payment later. For more information, you may contact Superior Court at (602) 506-3427.

**SUPERIOR COURT ACTION ON THE APPEAL** If you have completed all of these steps, you will receive a ruling from the Superior Court. The Superior Court has the right to affirm the trial court, overrule the trial court, modify some of the trial court's decision, or, if the record is not clear, order a new trial in the Superior Court.

If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any reason, the court may use any bond, deposit or payments made to satisfy your obligation under the original judgment. You may have to return to the trial court to receive further instructions.

**DISPOSITION OF EXHIBITS UPON FINAL JUDGMENT** After a judgment has become final and non-appealable, a person who files a request, under penalty of perjury, setting forth ownership of or lawful entitlement to the possession of an exhibit, may obtain an ex-parte order permitting its withdrawal. Ninety days after a judgment has become final and non-appealable, the court having possession thereof may dispose of all case related exhibits in its possession.